

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Thursday, September 13, 2018 9:56 AM
To: Sanchez, Rodzandra (COE)
Subject: INQ 18-216, John Dubois, Vice Mayor, Village of Palmetto Bay (Voting Conflict)

INQ 18-216 Dubois

From: Arrojo, Jose (COE)
Sent: Wednesday, September 12, 2018 6:39 PM
To: Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>
Subject: FW: INQ 216, John Dubois, Vice Mayor, Village of Palmetto Bay, Voting Conflict

I put this hardcopy in your box with attachments. Thank you. Jose

From: Arrojo, Jose (COE)
Sent: Wednesday, September 12, 2018 5:49 PM
To: 'JDubois@eyecast.com' <JDubois@eyecast.com>
Cc: 'dlehtinen@palmettobay-fl.gov' <dlehtinen@palmettobay-fl.gov>; Perez, Martha D. (COE) <Martha.Perez2@miamidade.gov>
Subject: INQ 216, John Dubois, Vice Mayor, Village of Palmetto Bay, Voting Conflict

Dear Vice Mayor Dubois:

You have inquired as to whether or not you have a voting conflict with regard to an upcoming vote on three proposed ordinances:

1. An ordinance providing that in litigation against the Village by a Councilmember or an entity owned or controlled by a Councilmember, all Council meetings discussing the same shall be open to the public (Shade Elimination Ordinance); and
2. An ordinance providing that a four-fifths majority of the Council may censure a Councilmember (Censure Ordinance); and
3. An ordinance providing that in litigation against the Village by a Councilmember or an entity owned or controlled by a Councilmember, the Councilmember or entity must pay Village Attorney's fees and costs if the Village is the prevailing party (Prevailing Party Fee Recoupment Ordinance).

By way of background you have previously advised as follows:

You are the principal/owner/manager of a Florida For-Profit corporation, Indigo Street, LLC. Indigo Street LLC owns two adjacent properties located at 9726 E. Indigo Street and 9730 E. Indigo Street (the Indigo Street properties). 9726 E. Indigo street is a commercial office building and 9730 E. Indigo street is a vacant lot. These two properties have been held by Indigo street LLC since approximately 2011-2012 for "investment purposes." Both 9726 and 9730 are located along E. Indigo street.

There is a property located at property located at folio number 33-5033-000-0860 owned by the Shores at Palmetto Bay, LLC (the Shores property). The Shores property is an approximate three-acre property and the developer is seeking site-plan approval to allow development of "a couple of hundred dwelling units and commercial retail." The Village of Palmetto Bay Land Development Code mandates that

quasi-judicial Village Council Approval is required for approval of any site-plan which proposes 20 or more dwelling units. You advise that you do not have any interest in or relation to Shores at Palmetto Bay. The Shores property is located on Franjo Road approximately two full blocks to the North East away from your Indigo Street properties. No part of your Indigo Street properties adjoin or abut the Shores property.

You also previously advised that it is was your belief that the proposed development of the Shores property would not affect your Indigo Street parties in any way distinctly different than would other surrounding properties. It is your belief that area traffic, property values and aesthetics may be affected for all nearby property owners.

Finally, you advised that the development of the Shores property would not affect the development of your Indigo Street properties.

You previously asked for an opinion regarding whether or not you had a voting conflict on a zoning related vote regarding the development of the Shores property. Based on the facts your provided as detailed above, we relayed that we were unable to conclude that your zoning or personal interests would be affected in a way that would create a voting conflict under Section 2-11.1(d) of the Miami Dade County Conflict of Interest and Code of Ethics Ordinance. See INQ 18-170 John Dubois, Vice Mayor, Village of Palmetto Bay (Voting Conflict) More specifically, in the opinion, we noted that because you do not have a specified relationship with the owners of the Shores property and you are not a party that would or might, directly or indirectly, profit or be enhanced by the action of the Council in regards to the Shores property, then your vote would not be prohibited under Section 2-11.1(d).

Since then you have additionally informed us that in spite of the above described opinion provided on July 13, 2018, you nevertheless filed a conflict form, on advice of the Village Attorney, and did not vote on the matter. Subsequently, you filed an appeal of the Council's decision on the Shores property. For purposes of our discussion, it is my understanding that a Petition for Certiorari review has been filed with the Circuit Court in its appellate capacity seeking reversal of the Council decision. As a result of your filing, it has been suggested that another Councilmember is sponsoring the three proposed ordinances.

To restate, Section 2-11.1(d) of the Miami-Dade County Conflict of Interest and Code of Ethics ordinance is entitled "Further prohibition on transacting business with the County" and comprises the voting conflict section of the Code. It states that:

[N]o person included in the term defined in subsection (b)(1) shall vote on or participate in any way in any matter presented to the [Village Council] if said person has any of the following relationships with any of the persons or entities which would be or might be directly or indirectly affected by any action of the [Village Commissioners]: (i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary; or (ii) stockholder, bondholder, debtor, or creditor, if in any instance the transaction or matter would affect the person defined in subsection (b)(1) in a manner distinct from the manner in which it would affect the public generally. Any person included in the term defined in subsection (b)(1) who has any of the above relationships or who would or might, directly or indirectly, profit or be enhanced by the action of the [Village Council] shall absent himself or herself from the Commission meeting during the discussion of the subject item and shall not vote on or participate in any way in said matter.

Thus, as regards the Shade Elimination Ordinance, our focus is on whether you would or might, directly or indirectly, profit or be enhanced by the action of the action of the Council. Because you are currently engaged in litigation against the Village then you would be affected by having the litigation discussed in public meetings. Ordinarily litigation matters are discussed in attorney client shade meetings with municipal counsel.

Your pending litigation would not and so again you would be affected. However the ordinance does not address voting by defined persons who may be affected but rather those that would or might, directly or indirectly, profit or be enhanced by the action of the council. I decline to speculate on the remote possibility that a discussion of the litigation in public meeting would or could result in a decision by the Village in that litigation that might profit or enhance your position as the adverse party in the same case. In RQO 15-04, the Ethics Commission opined that the word “might” indicates that, at the, at the very least, a reasonable probability of profit or enhancement would trigger the prohibition. I do not think that the Council’s vote on the Shade Elimination Ordinance creates a reasonable probability of profit or enhancement that would trigger the prohibition. As such, I do not believe that you have a voting conflict with regard to the Shade Elimination Ordinance.

As regards the Censure Ordinance, you or any other member of the Council might be subject to censure for any variety of reasons. Perhaps, as it has been suggested, if the ordinance passes, then you might be subject to censure by your colleagues on the Council for filing an action against the Village. However, the ordinance as written is not designed to censure Councilmembers for engaging in any particular conduct. Also, the censure ordinance has no financial or substantive punitive sanction. It is certainly not written to specifically apply in scenarios where a Councilmember files an action against the Village. Again, relying on the Commission on Ethics prior opinion regarding the reasonable probability of profit or enhancement stemming from the vote of the elected body, I decline to speculate on the possibility that if the censure ordinance is passed in its current form, that four fifths of the Council might vote to censure a Councilmember, that you would be that Councilmember, and that you would be censured for filing an action against the Village. As such, I do not believe that you have a voting conflict with regard to the Censure Ordinance.

My thinking is different as regards the Prevailing Party Fee Recoupment Ordinance. To my knowledge, based on the information you have provided, you are the only Councilmember currently engaged in litigation against the Village. You are by your own admission, the principal/owner/manager of the Indigo Street properties and thus you are a person in a relationship with an entity that might be directly or indirectly affected by the action of Council on this ordinance. You will either prevail or not in litigation against the Village. If you do not prevail, and without knowing the specifics of the litigation, I assume that the Village’s decision in the Shores property zoning vote was done with the assistance of competent counsel, then you will be financially liable for the Village’s attorney’s fees in that litigation. It is two party litigation where you are attempting to reverse a municipal zoning decision. It seems to me that there is at least a reasonable probability of enhancement that would trigger the voting prohibition inasmuch as if the proposal fails, then could continue to litigate your case against the Village without the possibility of having to pay prevailing party attorney’s fees if you are not successful. I believe that you do have a voting conflict with regard to the Recoupment Ordinance and that you are prohibited pursuant to Section 2-11.1(d) of the Conflict of Interest and Code of Ethics ordinance from voting or participating in that matter.

Please keep in mind that this opinion is based on the limited facts provided as detailed in this correspondence. It is provided on an expedited manner as a courtesy to you given that the matters addressed here are due for Council vote this evening; you requested the opinion on the 10th of September. Additionally, this opinion interprets only the Miami Dade Conflict of Interest and Code of Ethics and not whether the activity is permitted or prohibited under State law.

Best regards,

Jose J. Arrojo

Executive Director

Miami-Dade Commission on Ethics and Public Trust

19 W. Flagler Street, Suite 820
Miami, FL 33130
Tel: (305) 579-2594
Fax: (305) 579-0273
<http://ethics.miamidade.gov/>



Arrojo, Jose (COE)

From: Arrojo, Jose (COE)
Sent: Tuesday, September 11, 2018 5:47 PM
To: John DuBois; Ethics (COE)
Cc: Dexter Lehtinen (dlehtinen@palmettobay-fl.gov); jdubois@palmettobay-fl.gov
Subject: RE: Ethics Opinion Requested

John,

Greetings. Don't know if you are aware, but I started as the Executive Director at the Commission on Ethics last Wednesday. I got your email request for an opinion dated 9/10 that you need for tomorrow. I telephoned you and left a message at the number listed in your email. I will be at my desk for a little while longer this evening. For purposes of our conversation, I will certainly take a little slower look at your question two but would like to speak to you about your question one that you advise relates to a meeting that is occurring on tomorrow's date. Please give me a call. For purposes of our conversation, may I assume that when you said that you filed an appeal of the zoning decision that you mean that you filed a petition for certiorari review of the decision to the Circuit Court, in its appellate capacity, correct?

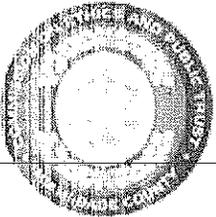
Finally, I see that Dexter is copied. I am happy to speak to Dexter, if you are not available.

Thank you,

Jose

Jose J. Arrojo

Executive Director
Miami-Dade Commission on Ethics and Public Trust
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From: John DuBois <JDubois@eyecast.com>
Sent: Monday, September 10, 2018 10:40 AM
To: Ethics (COE) <ethics@miamidade.gov>
Cc: Dexter Lehtinen (dlehtinen@palmettobay-fl.gov) <dlehtinen@palmettobay-fl.gov>; jdubois@palmettobay-fl.gov
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Ethics members,

I am requesting a written opinion from you on some matters coming up on our Regularly Scheduled Council Meeting for the Village of Palmetto Bay on this coming Weds, Sept 12th.

I apologize for the late notice to you, however, the agenda for this council meeting was not posted to our web site with content until after close of business on Friday, Sept 7th, so, this is as quickly thereafter as I was able to make this request.

Background: In Mid-June, I asked your ethics commission for an opinion on whether I could vote on a quasi-judicial matter (zoning application) from Shores Development (Wayne Rosen, developer), on a property that was about 700 feet from the property that I own in part in the same vicinity. The Zoning hearing was scheduled for July 16th, so, I made the request about 4 weeks in advance. In this instance, the information on the application was not available for public review until less than 1 week before the July 16th zoning hearing, so, I was not able to see it/know about the details and contemplate the implications as an effected property owner until just a couple of days before. Your opinion was consistent with our city attorney's opinion from several years earlier regarding the same property – not a conflict to vote on it. However, after digesting the application, I realized and concluded that the application was not in compliance with the city's zoning in many areas, most importantly as a neighbor, fell way short of parking rqmnts. At that time I discussed it with an attorney, and the entity through which I have ownership in the Indigo property followed the instructions on the postcard notices sent out by the village to put your objections in writing if you could not attend in person. My attorney for Indigo Street LLC did so on July 16th. I was not at the zoning hearing on the 16th which ended up being cancelled by the applicant and postponed till the 23rd of July. I was in Boston on the 23rd, so, after I got back, later the week of the 23rd I met with the city attorney who advised me to file a conflict form with the clerk which I did immediately upon his advice. During the zoning hearing on the 23rd, the council approved the project. I then, filed an appeal as a property owner with standing on the matter.

Since then, one of the other council members scheduled a special council meeting to discuss "the Vice Mayor's petition", i.e., the appeal. I did not go for obvious reasons despite there being no notice of actions on this matter, just discussion on it, I felt I was conflicted per my conflict letter to the clerk and shouldn't go. That meeting was spent in large part discussing the council filing an ethics complaint against me and creating new legislation to make any council member who sues their own city to pay for the city's attorney fees if they lose the case. There were equally pointed items brought up by councilmember singer and others regarding new legislation to discourage this behavior in the future. That brings us to the question for today ...

There is a regularly scheduled council meeting Weds evening (2 days from today), in which the following items are on the agenda ...

VILLAGE ATTORNEY'S REPORT

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VILLAGE ATTORNEY'S REPORT

- Memorandum – Disclosure of Property Holdings in Palmetto Bay
- Memorandum – Prohibiting Campaign Contributions
- Update on litigation

Item 13e on the agenda, saying all litigation initiated by a council member against the village shall be handled by the village during sunshine meetings, I believe this is effectively saying there can be no Shade Sessions for this type of litigation. Sponsored by David Singer.

So - maybe not in the best interest of city -

Item 13f also sponsored by David Singer, allowing the council to censure other council members with 4/5th majority – my view is this will likely spiral into an example discussion about “the vice mayor suing the city” and it being unethical.

Item 13g also sponsored by David Singer as mentioned above, making the council member who sues the village liable for the City’s attorney’s fees if the city prevails.

So, #1, I am requesting an opinion as to whether I can participate in the above captioned discussions, and if not, do I need to leave the room and for which ones if not all. I need this by COB on Weds, otherwise, I will depend solely on the City Attorney’s advice on these matters.

Also, #2, I am requesting, if possible, that your County Ethics group does an analysis or investigation, whichever you think is appropriate, as to whether I did anything wrong on the zoning matter described above, and furthermore, based on my actions (participation) in other zoning hearings in the past in our downtown area including one property even closer than 700 feet (to which I had no objections as I believed they were in compliance with our code and I voted to approve); is there inconsistency in my participation record resulting in ethics issues that should be addressed. This one is not nearly as time sensitive as #1 above.

Thank you.

John DuBois
Vice Mayor, Palmetto Bay
786 888-4000

*As to number one -
no - no shade matters. You*

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- Memorandum – Prohibiting Campaign Contributions
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Item 13f also sponsored by David Singer, allowing the council to censure other council members with 4/5th majority – my view is this will likely spiral into an example discussion about “the vice mayor suing the city” and it being unethical. *Shade meeting fees; seems re: litigation. Come - not us.*

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Thank you.



John DuBois
 Vice Mayor, Palmetto Bay
 786 888-4000

*Filed an appeal of
 the zoning boards
 decision.
 Appeal to the Commission -
 yes?*